

HOUSE BILL 474
By Odom

AN ACT to amend Tennessee Code Annotated, Title 56,
Chapter 6, relative to independent adjuster
licensing.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 6, is amended by adding
the following as a new part thereto:

§ 56-6-901.

(a) This part shall be known and may be cited as the "Tennessee Independent
Adjuster Licensing Act of 2005".

(b) This part governs the qualifications and procedures for the licensing of
independent adjusters. It specifies the duties of and restrictions on independent
adjusters.

§ 56-6-902.

Any term used in this part that is defined in § 56-6-102 has the meaning defined in that
section. In addition, as used herein, unless the context otherwise requires:

(1) "Home state" means the District of Columbia and any state or territory of the
United States in which a licensee maintains the licensee's principal place of residence or
principal place of business and is licensed to act as an independent adjuster;

(2) "Independent adjuster" means any person who is not the employee of an
insurer but who for compensation or any other thing of value:

(A) Acts or aids, in relation to claims arising under insurance contracts, on
behalf of an insurer in negotiating for, or effecting the settlement of, a claim for
loss or damage covered by those insurance contracts;

(B) Advertises for employment as an adjuster of insurance claims for an insurer or solicits business or represents oneself to the public to be an adjuster of insurance claims for losses or damages arising out of policies of insurance on behalf of an insurer; or

(C) Directly or indirectly solicits business, investigates or adjusts losses, or advises an insurer about claims for losses or damages arising out of policies of insurance for another person engaged in the business of adjusting losses or damages covered by an insurance policy.

(3) "Uniform individual application" means the current version of the NAIC Uniform Individual Application for resident and nonresident individuals.

§ 56-6-903.

(a) A person shall not act or hold out to be an independent adjuster in this state unless the person is licensed as an independent adjuster in accordance with this part.

(b) A person licensed as an independent adjuster shall not represent or act as an adjuster representing an insured in any capacity.

(c) Notwithstanding subsections (a) and (b), a license as an independent adjuster shall not be required of the following:

(1) An attorney admitted to practice in this state, when acting in such person's professional capacity as an attorney;

(2) An employee of an insurer;

(3) A person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed independent adjuster, including photographers, estimators, private investigators, engineers, and handwriting experts; or

(4) A person who settles subrogation claims between insurers.

§ 56-6-904.

(a) A person applying for an independent adjuster license shall make application to the commissioner on the appropriate uniform application or other application prescribed by the commissioner.

(b) The applicant shall declare under penalty of perjury and under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the applicant's knowledge and belief.

§ 56-6-905.

(a) Before issuing an independent adjuster license to an applicant under this section, the commissioner shall find that the applicant:

(1) Is eligible to designate this state as the applicant's home state or is a nonresident who is eligible for a license under § 56-6-908;

(2) Has not committed any act that is a ground for denial, suspension, or revocation of license as set forth in § 56-6-911;

(3) Is trustworthy, reliable, and of good reputation, evidence of which may be determined by the commissioner;

(4) Is financially responsible to exercise the license and has provided proof of financial responsibility as required in § 56-6-912;

(5) Has paid the fees set forth in § 56-6-920. The fees shall be payable in advance, shall be deemed earned when received, and shall not be refundable, transferable, or pro-ratable;

(6) Maintains an office in the state of residence with public access during regular business hours;

(7) If an individual:

(A) Is at least eighteen (18) years of age;

(B) Is a full-time salaried employee of a licensed independent adjuster or a graduate of a recognized law school, or has experience or special education or training as to the handling of loss claims under insurance contracts of sufficient duration and extent to make the person reasonably competent to fulfill the responsibilities of an independent adjuster; and

(C) Has successfully passed the adjuster examination.

(8) If a business entity:

(A) Has designated a licensed individual independent adjuster responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state; and

(B) Has designated only licensed individual independent adjusters to exercise the business entity's license.

(b) The commissioner may require any documents reasonably necessary to verify the information contained in the application.

§ 56-6-906.

(a) An individual applying for an independent adjuster license pursuant to § 56-6-905 shall pass a written examination unless exempt pursuant to § 56-6-907. The examination shall test the knowledge of the individual concerning the duties and responsibilities of an adjuster and the insurance laws and regulations of this state. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the commissioner.

(b) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting examination fees.

(c) Each individual applying for an examination shall remit a non-refundable fee as prescribed by the commissioner as set forth in § 56-6-920.

(d) An individual who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

§ 56-6-907.

(a) An individual who applies for an independent adjuster license in this state who was previously licensed as an independent adjuster in another state based on an adjuster examination shall not be required to complete any prelicensing examination. This exemption is only available if the person is currently licensed in that state or if the application is received within twelve (12) months of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's producer database records, maintained by the NAIC, its affiliates, or subsidiaries, indicates that the independent adjuster is or was licensed in good standing.

(b) A person licensed as an independent adjuster in another state based on an adjuster examination who moves to this state shall make application within ninety (90) days of establishing legal residence to become a resident licensee pursuant to § 56-6-905. No prelicensing examination shall be required of that person to obtain an independent adjuster license.

(c) An individual who applies for an independent adjuster license in this state who was previously licensed as an independent adjuster in this state shall not be required to complete any prelicensing examination. This exemption is only available if the application is received within twelve (12) months of the cancellation of the applicant's

previous license in this state and if, at the time of cancellation, the applicant was in good standing in this state.

§ 56-6-908.

(a) Unless denied licensure pursuant to § 56-6-911, a nonresident person shall receive a nonresident independent adjuster license if:

(1) The person is currently licensed as a resident independent adjuster and is in good standing in such person's home state;

(2) The person has submitted the proper request for licensure, has paid the fees required by § 56-6-920, and has provided proof of financial responsibility as required in § 56-6-912;

(3) The person has submitted or transmitted to the commissioner the appropriate completed application for licensure; and

(4) The person's home state awards non-resident independent adjuster licenses to residents of this state on the same basis.

(b) The commissioner may verify the independent adjuster's licensing status through the producer database maintained by the NAIC, its affiliates, or subsidiaries.

(c) As a condition to continuation of an independent adjuster license issued under this section, the licensee must maintain a resident independent adjuster license in his or her home state. The non-resident independent adjuster license issued under this section shall terminate and be surrendered immediately to the commissioner if the home state independent adjuster license terminates for any reason.

§ 56-6-909.

(a) Unless denied licensure pursuant to § 56-6-911, persons who have met the requirements of § 56-6-905 or § 56-6-908 shall be issued an independent adjuster license.

(b) An independent adjuster license shall remain in effect unless revoked, terminated, or suspended as long as the request for renewal and fee set forth in § 56-6-920 is paid and any other requirements for license renewal are met by the due date.

(c) The licensee shall inform the commissioner by any means acceptable to the commissioner of a change of address, change of legal name, or change of information submitted on the application within thirty (30) days of the change.

(d) A licensed independent adjuster shall be subject to chapter 8 of this title.

(e) An independent adjuster who allows such adjuster's license to lapse may, within twelve (12) months from the due date of the renewal, be issued a new independent adjuster license upon the commissioner's receipt of the request for renewal. However, a penalty in the amount of double the unpaid renewal fee shall be required for the issue of the new independent adjuster license. The new independent adjuster license shall be effective the date the commissioner receives the request for renewal and the late payment penalty.

(f) A licensed independent adjuster who is unable to comply with license renewal procedures due to military service, a long-term medical disability, or some other extenuating circumstance, may request a waiver of those procedures. The independent adjuster may also request a waiver of any examination requirement, fine, or other sanction imposed for failure to comply with renewal procedures.

(g) The license shall contain the licensee's name, city and state of business address, personal identification number, the date of issuance, the expiration date, and any other information the commissioner deems necessary.

(h) In order to assist in the performance of the commissioner's duties, the commissioner may contract with nongovernmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions,

including the collection of fees and data, related to licensing that the commissioner may deem appropriate.

§ 56-6-910.

(a) The commissioner may issue a temporary independent adjuster license for a period not to exceed one hundred eighty (180) days without requiring an examination if the commissioner deems that the temporary license is necessary for the successful resolution of claims under existing independent adjuster contracts in the following cases:

(1) To the surviving spouse or court-appointed personal representative of a licensed independent adjuster who dies or becomes mentally or physically disabled to allow adequate time for the sale of the independent adjuster business owned by the independent adjuster or for the recovery or return of the independent adjuster to the business or to provide for the training and licensing of new personnel to operate the independent adjuster's business;

(2) To a member or employee of a business entity licensed as an independent adjuster, upon the death or disability of the sole individual designated in the business entity application or the license;

(3) To the designee of a licensed independent adjuster entering active service in the armed forces of the United States of America; or

(4) In any other circumstance where the commissioner deems that the public interest will best be served by the issuance of this license.

(b) The temporary licensee shall wind up the independent adjuster affairs of the disabled or deceased individual and shall conduct no further business except as may be essential to the orderly conclusion of the existing independent adjuster contracts.

(c) The commissioner may by order limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The commissioner

shall require the temporary licensee to have a suitable sponsor who is a licensed independent adjuster and who assumes responsibility for all acts of the temporary licensee and may impose other similar requirements designed to protect insurers. The commissioner may by order revoke a temporary license if the interests of insurers are endangered. A temporary license may not continue after the owner or the personal representative disposes of the business or completes all existing independent adjuster contracts.

§ 56-6-911.

(a) The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an independent adjuster's license or may levy a civil penalty in accordance with the provisions of this title, or any combination of actions, for any one (1) or more of the following causes:

(1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;

(2) Violating any insurance laws, or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner;

(3) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(4) Improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business;

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(6) Having been convicted of a felony;

(7) Having admitted or been found to have committed any insurance unfair trade practice or insurance fraud;

(8) Using fraudulent, coercive, or dishonest practices; or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere;

(9) Having an insurance license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

(10) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(11) Cheating, including improperly using notes or any other reference material, to complete an examination for an insurance license;

(12) Knowingly accepting insurance business from an individual who is not licensed but who is required to be licensed by the commissioner; or

(13) Failing to comply with an administrative or court order imposing a child support obligation.

(b) In the event that the action by the commissioner is to deny an application for or nonrenew a license, the commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the non-renewal or denial of the applicant's or licensee's license. The applicant or licensee may make written demand upon the commissioner in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and a hearing shall be held in accordance with that Act.

(c) The license of a business entity may be suspended, revoked, or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one (1) or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the commissioner nor corrective action taken.

(d) In addition to or in lieu of any applicable denial, suspension, or revocation of a license, a person may, after hearing, be subject to a civil fine according to the provisions of this chapter.

(e) The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this part or title against any person who is under investigation for or charged with a violation of this part or title even if the person's license or registration has been surrendered or has lapsed by operation of law.

§ 56-6-912.

(a) Prior to issuance of a license as an independent adjuster, the applicant shall have on file with the commissioner and, for as long as the license remains in effect, shall maintain in force evidence of financial responsibility through one (1) or more of the following:

(1) The certificate of an insurer authorized to write legal liability insurance in this state, that the insurer has and will keep in effect on behalf of the licensee a policy of insurance, which:

(A) Shall be in an amount not less than twenty thousand dollars (\$20,000) for any single occurrence and one hundred thousand dollars (\$100,000) in the aggregate for all occurrences within one (1) year;

(B) Shall cover the legal liability of the independent adjuster as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices in his or her capacity as an independent adjuster; and

(C) Shall not be terminated unless at least thirty (30) days' prior written notice will have been filed with the commissioner and given to the licensee.

(2) A surety bond executed and issued by an insurer authorized to issue surety bonds in this state, which bond:

(A) Shall be in the amount of at least twenty thousand dollars (\$20,000);

(B) Shall be in favor of this state and shall specifically authorize recovery by the commissioner of the damages sustained as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices in his or her capacity as an independent adjuster; and

(C) Shall not be terminated unless at least thirty (30) days' prior written notice will have been filed with the commissioner and given to the licensee.

(3) An irrevocable letter of credit issued by a qualified financial institution, which letter of credit:

(A) Shall be in the sum of at least twenty thousand dollars (\$20,000); and

(B) Shall be to an account to the commissioner and subject to lawful levy of execution by any person to whom the independent adjuster has been found to be legally liable as the result of erroneous acts, failure to act, fraudulent acts, or unfair practices in his or her capacity as an independent adjuster.

(b) The independent adjuster license shall automatically terminate if the evidence of financial responsibility terminates or becomes impaired.

§ 56-6-913.

(a) An individual, who holds an independent adjuster license and who is not exempt under subsection (b), shall satisfactorily complete a minimum of twenty-four (24)

hours of continuing education courses, including ethics, specifically designed to increase the knowledge of independent adjusting duties and responsibilities, during each continuing education biennium.

(b) This section shall not apply to:

(1) Licensees not licensed for one (1) full year prior to the end of the applicable continuing education biennium; and

(2) Licensees holding nonresident independent adjuster licenses who have met the continuing education requirements of their home state and whose home state gives credit to residents of this state on the same basis.

(c) Only continuing education courses approved by the commissioner shall be used to satisfy the continuing education requirement of subsection (a).

§ 56-6-914.

(a) An insurer or independent adjuster shall not pay a commission, service fee, brokerage, or other valuable consideration to a person for investigating or settling claims in this state if that person is required to be licensed under this part and is not so licensed.

(b) A person shall not accept a commission, service fee, brokerage, or other valuable consideration for investigating or settling claims in this state if that person is required to be licensed under this part and is not so licensed.

(c) An insurer or independent adjuster may pay or assign commission, service fees, brokerages, or other valuable consideration to persons who do not investigate or settle claims in this state, unless the payment would violate § 56-8-104(4) or (7).

§ 56-6-915.

(a) The agreement between the independent adjuster and the insurer shall be in writing and contain the following:

(1) Name and address of the independent adjuster;

(2) Name and address of insureds;

(3) Description of the loss and its location, if applicable;

(4) Name of insurer and policy number;

(5) Full salary, fee, commission, or other consideration the independent adjuster is to receive for services under the contract;

(6) Disclosures, that:

(A) Insurer is not required to hire an independent adjuster;

(B) Insurer has the right to communicate directly with the insurer's attorney, the insured, the insured's adjuster, and the insured's attorney, or any other person regarding the settlement of the claim;

(C) Independent adjuster is not a representative or employee of the insured; and

(D) The salary, fee, commission, or other consideration is to be paid by the insurer, not by the insured;

(7) Description of services to be provided to the insurer;

(8) Signatures of the independent adjuster and the insurer; and

(9) Date contract was signed by the independent adjuster and date the contract was signed by the insurer.

(b) The contracts shall be executed in duplicate to provide an original contract to the independent adjuster and an original contract to the insurer. The independent

adjuster's original contract shall be available at all times for inspection without notice by the commissioner.

(c) Within five (5) working days after the date the contract is signed, the independent adjuster shall give written notice to the insured, its adjuster, or its attorney that the independent adjuster has entered into a written contract with the insurer.

§ 56-6-916.

(a) An independent adjuster who receives, accepts, or holds any money on behalf of an insurer, towards the settlement of a claim for loss or damage, shall deposit the money in an interest bearing escrow or trust account in a financial institution in this state which is insured by an agency of the federal government.

(b) All funds held in an escrow or trust account and interest accruing thereon shall be the property of the insurer and shall be held pursuant to a written agreement signed by the insurer and by the independent adjuster.

§ 56-6-917.

(a) An independent adjuster shall maintain a complete record of each transaction as an independent adjuster. The records required by this section shall include the following:

- (1) Name of the insurer;
- (2) Date, location, and amount of the loss;
- (3) Copy of the contract between the independent adjuster and insurer;
- (4) Name of the insured, amount, expiration date and number of each policy carried with respect to the loss;
- (5) Itemized statement of the insurer's recoveries;
- (6) Itemized statement of all compensation received by the independent adjuster, from any source whatsoever, in connection with the loss;

(7) A register of all monies received, deposited, disbursed, or withdrawn in connection with a transaction with an insurer, including fees transfers and disbursements from a trust account and all transactions concerning all interest bearing accounts;

(8) Name of independent adjuster who executed the contract; and

(9) Name of the attorney representing the insurer, if applicable, and the name of the public adjuster and attorney representing the insured, if applicable.

(b) Records shall be maintained for at least five (5) years after the termination of the transaction with an insurer and shall be open to examination by the commissioner at all times.

(c) Records submitted to the commissioner in accordance with this section that contain information identified in writing as proprietary by the independent adjuster shall be treated as confidential by the commissioner and shall not be subject to inspection by the public, notwithstanding any other law or regulation to the contrary.

§ 56-6-918.

(a) An independent adjuster shall be honest and fair in all communications with the insurer, the insured and the public.

(b) An independent adjuster shall not permit an unlicensed employee or representative of the independent adjuster to advertise, engage insurers, furnish reports, or present bills to insurers, or in any manner whatsoever to conduct business for which a license is required under this part.

(c) An independent adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insurer.

(d) An independent adjuster shall not acquire any interest in salvage of property subject to the contract with the insurer unless the independent adjuster obtains written permission from the insurer after settlement of the claim with the insured.

(e) The independent adjuster shall abstain from referring or directing the insurer to recommend repairs or services in connection with a loss from any person:

(1) With whom the independent adjuster has a financial interest; or

(2) From whom the independent adjuster may receive direct or indirect compensation for the referral.

§ 56-6-919.

(a) The independent adjuster shall report to the commissioner any administrative action taken against the independent adjuster in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

(b) Within thirty (30) days of the initial pretrial hearing date, the independent adjuster shall report to the commissioner any criminal prosecution of the independent adjuster taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

§56-6-920.

In addition to any other fees that may be required elsewhere in this title, the following are the nonrefundable fees which shall be paid to the commissioner under this part:

(1) Two hundred dollars (\$200) for the filing of an application for an independent adjuster license; and

(2) Two hundred dollars (\$200) for the renewal of an independent adjuster license.

SECTION 2. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect January 1, 2006, the public welfare requiring it.